

AO 245B(05-MA)

(Rev. 06/05) Judgment in a Criminal Case  
Sheet 1 - D. Massachusetts - 10/05

# UNITED STATES DISTRICT COURT

## District of Massachusetts

UNITED STATES OF AMERICA

V.

TAREK MEHANNA

**JUDGMENT IN A CRIMINAL CASE**

Case Number: 1: 09 CR 10017 - 001 - GAO

USM Number: 27152-038

J.W. CARNEY, ESQUIRE

Defendant's Attorney



Additional documents attached

☐ Correction of Sentence for Clerical Mistake (Fed. R. Crim. P.36)**THE DEFENDANT:**☐ pleaded guilty to count(s) \_\_\_\_\_☐ pleaded nolo contendere to count(s) \_\_\_\_\_  
which was accepted by the court.☒ was found guilty on count(s) 1ss-7ss (Date of Verdict: 12/20/11)  
after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Additional Counts - See continuation page ☒

<u>Title &amp; Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
18 USC Sec. 2339B	Conspiracy to Provide Material Support or Resources to a Designated Foreign Terrorist Group.	06/17/10	1ss
18 USC Sec. 2339A	Conspiracy to Provide Material Support to Terrorists.	06/17/10	2ss
18 USC Sec. 2339A	Providing and Attempting to Provide Material Support to Terrorists.	02/28/07	3ss
18 USC Sec. 956	Conspiracy to Kill in a Foreign Country	06/17/10	4ss

The defendant is sentenced as provided in pages 2 through 10 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.☐ The defendant has been found not guilty on count(s) \_\_\_\_\_☐ Count(s) \_\_\_\_\_ ☐ is ☐ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

04/12/12

Date of Imposition of Judgment

Signature of Judge

The Honorable George A. O'Toole  
Judge, U.S. District Court

Name and Title of Judge

Date

April 13, 2012

DEFENDANT: TAREK MEHANNA  
CASE NUMBER: 1: 09 CR 10017 - 001 - GAO

ADDITIONAL COUNTS OF CONVICTION

<u>Title &amp; Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
18 USC Sec 371	Conspiracy	06/17/10	5ss
18 USC Sec. 1001	Making False Statements	12/16/06	6ss
(a)(2)			
18 USC Sec. 1001	Making False Statements	12/16/06	7ss
(a)(2)			

DEFENDANT: **TAREK MEHANNA**  
CASE NUMBER: **1: 09 CR 10017 - 001 - GAO**

### IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of: 210 month(s)

210 months on count 4ss, 180 months on each of counts 1ss-3ss, 60 months on each of counts 5ss-7ss. All terms of imprisonment to be served concurrently.

☐ The court makes the following recommendations to the Bureau of Prisons:

☒ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at \_\_\_\_\_ ☐ a.m. ☐ p.m. on \_\_\_\_\_.

☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 p.m. on \_\_\_\_\_.

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

### RETURN

I have executed this judgment as follows:

Defendant delivered on \_\_\_\_\_ to \_\_\_\_\_

a \_\_\_\_\_, with a certified copy of this judgment.

UNITED STATES MARSHAL

By \_\_\_\_\_

DEPUTY UNITED STATES MARSHAL

DEFENDANT: **TAREK MEHANNA**CASE NUMBER: **1: 09 CR 10017 - 001 - GAO****SUPERVISED RELEASE**☒ See continuation page

Upon release from imprisonment, the defendant shall be on supervised release for a term of : 7 year(s)  
on each of counts 1ss-7ss, to run concurrently with each other.

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, not to exceed 104 tests per year, as directed by the probation officer.

- ☒ The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)
- ☒ The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. (Check, if applicable.)
- ☒ The defendant shall cooperate in the collection of DNA as directed by the probation officer. (Check, if applicable.)
- ☐ The defendant shall register with the state sex offender registration agency in the state where the defendant resides, works, or is a student, as directed by the probation officer. (Check, if applicable.)
- ☐ The defendant shall participate in an approved program for domestic violence. (Check, if applicable.)

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

**STANDARD CONDITIONS OF SUPERVISION**

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: **TAREK MEHANNA**CASE NUMBER: **1: 09 CR 10017 - 001 - GAO****CRIMINAL MONETARY PENALTIES**

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
<b>TOTALS</b>	\$ <u>700.00</u>	\$	\$

☐ The determination of restitution is deferred until \_\_\_\_\_. An *Amended Judgment in a Criminal Case* (AO 245C) will be entered after such determination.

☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss*</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
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☐ See Continuation  
Page

<b>TOTALS</b>	\$ <u>0.00</u>	\$ <u>0.00</u>
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☐ Restitution amount ordered pursuant to plea agreement \$ \_\_\_\_\_

☐ The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☐ the interest requirement is waived for the ☐ fine ☐ restitution.

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

\* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

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### SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties are due as follows:

- A ☐ Lump sum payment of \$ \_\_\_\_\_ due immediately, balance due  
☐ not later than \_\_\_\_\_, or  
☐ in accordance ☐ C, ☐ D, ☐ E, or ☐ F below; or
- B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or
- C ☐ Payment in equal \_\_\_\_\_ (e.g., weekly, monthly, quarterly) installments of \$ \_\_\_\_\_ over a period of \_\_\_\_\_ (e.g., months or years), to commence \_\_\_\_\_ (e.g., 30 or 60 days) after the date of this judgment; or
- D ☐ Payment in equal \_\_\_\_\_ (e.g., weekly, monthly, quarterly) installments of \$ \_\_\_\_\_ over a period of \_\_\_\_\_ (e.g., months or years), to commence \_\_\_\_\_ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E ☐ Payment during the term of supervised release will commence within \_\_\_\_\_ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F ☒ Special instructions regarding the payment of criminal monetary penalties:  
The assessment fee is due forthwith.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

☐ See Continuation  
Page

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

☐ The defendant shall pay the cost of prosecution.

☐ The defendant shall pay the following court cost(s):

☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

DEFENDANT: **TAREK MEHANNA**  
CASE NUMBER: **1: 09 CR 10017 - 001 - GAO**  
DISTRICT: **MASSACHUSETTS**

## STATEMENT OF REASONS

### I COURT FINDINGS ON PRESENTENCE INVESTIGATION REPORT

- A ☐ The court adopts the presentence investigation report without change.
- B ☒ The court adopts the presentence investigation report with the following changes.  
(Check all that apply and specify court determination, findings, or comments, referencing paragraph numbers in the presentence report, if applicable.)  
(Use Section VIII if necessary.)
- 1 ☐ Chapter Two of the U.S.S.G. Manual determinations by court (including changes to base offense level, or specific offense characteristics):
- 2 ☒ Chapter Three of the U.S.S.G. Manual determinations by court (including changes to victim-related adjustments, role in the offense, obstruction of justice, multiple counts, or acceptance of responsibility):  
No adjustments under sec. 3A1.2
- 3 ☐ Chapter Four of the U.S.S.G. Manual determinations by court (including changes to criminal history category or scores, career offender, or criminal livelihood determinations):
- 4 ☐ Additional Comments or Findings (including comments or factual findings concerning certain information in the presentence report that the Federal Bureau of Prisons may rely on when it makes inmate classification, designation, or programming decisions):
- C ☐ The record establishes no need for a presentence investigation report pursuant to Fed.R.Crim.P. 32.

### II COURT FINDING ON MANDATORY MINIMUM SENTENCE (Check all that apply.)

- A ☒ No count of conviction carries a mandatory minimum sentence.
- B ☐ Mandatory minimum sentence imposed.
- C ☐ One or more counts of conviction alleged in the indictment carry a mandatory minimum term of imprisonment, but the sentence imposed is below a mandatory minimum term because the court has determined that the mandatory minimum does not apply based on
- ☐ findings of fact in this case
  - ☐ substantial assistance (18 U.S.C. § 3553(e))
  - ☐ the statutory safety valve (18 U.S.C. § 3553(f))

### III COURT DETERMINATION OF ADVISORY GUIDELINE RANGE (BEFORE DEPARTURES):

Total Offense Level: 47  
Criminal History Category: VI  
Imprisonment Range: to **life** months  
Supervised Release Range: 2 to **life** years  
Fine Range: \$ 25,000 to \$ 250,000  
☒ Fine waived or below the guideline range because of inability to pay.

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DISTRICT: **MASSACHUSETTS**

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### STATEMENT OF REASONS

#### IV ADVISORY GUIDELINE SENTENCING DETERMINATION (Check only one.)

- A ☐ The sentence is within an advisory guideline range that is not greater than 24 months, and the court finds no reason to depart.
- B ☐ The sentence is within an advisory guideline range that is greater than 24 months, and the specific sentence is imposed for these reasons.  
(Use Section VIII if necessary.)
- C ☐ The court departs from the advisory guideline range for reasons authorized by the sentencing guidelines manual.  
(Also complete Section V.)
- D ☒ The court imposed a sentence outside the advisory sentencing guideline system. (Also complete Section VI.)

#### V DEPARTURES AUTHORIZED BY THE ADVISORY SENTENCING GUIDELINES (If applicable.)

##### A The sentence imposed departs (Check only one.):

- ☐ below the advisory guideline range  
☐ above the advisory guideline range

##### B Departure based on (Check all that apply.):

###### 1 Plea Agreement (Check all that apply and check reason(s) below.):

- ☐ 5K1.1 plea agreement based on the defendant's substantial assistance  
☐ 5K3.1 plea agreement based on Early Disposition or "Fast-track" Program  
☐ binding plea agreement for departure accepted by the court  
☐ plea agreement for departure, which the court finds to be reasonable  
☐ plea agreement that states that the government will not oppose a defense departure motion.

###### 2 Motion Not Addressed in a Plea Agreement (Check all that apply and check reason(s) below.):

- ☐ 5K1.1 government motion based on the defendant's substantial assistance  
☐ 5K3.1 government motion based on Early Disposition or "Fast-track" program  
☐ government motion for departure  
☐ defense motion for departure to which the government did not object  
☐ defense motion for departure to which the government objected

###### 3 Other

- ☐ Other than a plea agreement or motion by the parties for departure (Check reason(s) below.):

##### C Reason(s) for Departure (Check all that apply other than 5K1.1 or 5K3.1.)

- |                                                                                    |                                                                  |                                                                         |
|------------------------------------------------------------------------------------|------------------------------------------------------------------|-------------------------------------------------------------------------|
| <input type="checkbox"/> 4A1.3 Criminal History Inadequacy                         | <input type="checkbox"/> 5K2.1 Death                             | <input type="checkbox"/> 5K2.11 Lesser Harm                             |
| <input type="checkbox"/> 5H1.1 Age                                                 | <input type="checkbox"/> 5K2.2 Physical Injury                   | <input type="checkbox"/> 5K2.12 Coercion and Duress                     |
| <input type="checkbox"/> 5H1.2 Education and Vocational Skills                     | <input type="checkbox"/> 5K2.3 Extreme Psychological Injury      | <input type="checkbox"/> 5K2.13 Diminished Capacity                     |
| <input type="checkbox"/> 5H1.3 Mental and Emotional Condition                      | <input type="checkbox"/> 5K2.4 Abduction or Unlawful Restraint   | <input type="checkbox"/> 5K2.14 Public Welfare                          |
| <input type="checkbox"/> 5H1.4 Physical Condition                                  | <input type="checkbox"/> 5K2.5 Property Damage or Loss           | <input type="checkbox"/> 5K2.16 Voluntary Disclosure of Offense         |
| <input type="checkbox"/> 5H1.5 Employment Record                                   | <input type="checkbox"/> 5K2.6 Weapon or Dangerous Weapon        | <input type="checkbox"/> 5K2.17 High-Capacity, Semiautomatic Weapon     |
| <input type="checkbox"/> 5H1.6 Family Ties and Responsibilities                    | <input type="checkbox"/> 5K2.7 Disruption of Government Function | <input type="checkbox"/> 5K2.18 Violent Street Gang                     |
| <input type="checkbox"/> 5H1.11 Military Record, Charitable Service,<br>Good Works | <input type="checkbox"/> 5K2.8 Extreme Conduct                   | <input type="checkbox"/> 5K2.20 Aberrant Behavior                       |
| <input type="checkbox"/> 5K2.0 Aggravating or Mitigating Circumstances             | <input type="checkbox"/> 5K2.9 Criminal Purpose                  | <input type="checkbox"/> 5K2.21 Dismissed and Uncharged Conduct         |
|                                                                                    | <input type="checkbox"/> 5K2.10 Victim's Conduct                 | <input type="checkbox"/> 5K2.22 Age or Health of Sex Offenders          |
|                                                                                    |                                                                  | <input type="checkbox"/> 5K2.23 Discharged Terms of Imprisonment        |
|                                                                                    |                                                                  | <input type="checkbox"/> Other guideline basis (e.g., 2B1.1 commentary) |

##### D Explain the facts justifying the departure. (Use Section VIII if necessary.)

DEFENDANT: **TAREK MEHANNA**  
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DISTRICT: **MASSACHUSETTS**

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**STATEMENT OF REASONS****VI COURT DETERMINATION FOR SENTENCE OUTSIDE THE ADVISORY GUIDELINE SYSTEM**

(Check all that apply.)

**A The sentence imposed is (Check only one.):**

- ☒ below the advisory guideline range  
☐ above the advisory guideline range

**B Sentence imposed pursuant to (Check all that apply.):****1 Plea Agreement (Check all that apply and check reason(s) below.):**

- ☐ binding plea agreement for a sentence outside the advisory guideline system accepted by the court  
☐ plea agreement for a sentence outside the advisory guideline system, which the court finds to be reasonable  
☐ plea agreement that states that the government will not oppose a defense motion to the court to sentence outside the advisory guideline system

**2 Motion Not Addressed in a Plea Agreement (Check all that apply and check reason(s) below.):**

- ☐ government motion for a sentence outside of the advisory guideline system  
☐ defense motion for a sentence outside of the advisory guideline system to which the government did not object  
☐ defense motion for a sentence outside of the advisory guideline system to which the government objected

**3 Other**

- ☐ Other than a plea agreement or motion by the parties for a sentence outside of the advisory guideline system (Check reason(s) below.):

**C Reason(s) for Sentence Outside the Advisory Guideline System (Check all that apply.)**

- ☐ the nature and circumstances of the offense and the history and characteristics of the defendant pursuant to 18 U.S.C. § 3553(a)(1)  
☐ to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense (18 U.S.C. § 3553(a)(2)(A))  
☐ to afford adequate deterrence to criminal conduct (18 U.S.C. § 3553(a)(2)(B))  
☐ to protect the public from further crimes of the defendant (18 U.S.C. § 3553(a)(2)(C))  
☐ to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner (18 U.S.C. § 3553(a)(2)(D))  
☐ to avoid unwarranted sentencing disparities among defendants (18 U.S.C. § 3553(a)(6))  
☐ to provide restitution to any victims of the offense (18 U.S.C. § 3553(a)(7))

**D Explain the facts justifying a sentence outside the advisory guideline system. (Use Section VIII if necessary.)**

See statement of reasons made on the record in open court, a transcript of which is attached and is incorporated herein.

DEFENDANT: **TAREK MEHANNA**  
CASE NUMBER: **1: 09 CR 10017 - 001 - GAO**  
DISTRICT: **MASSACHUSETTS**

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## STATEMENT OF REASONS

### VII COURT DETERMINATIONS OF RESTITUTION

- A ☒ Restitution Not Applicable.
- B Total Amount of Restitution: \_\_\_\_\_
- C Restitution not ordered (Check only one.):
- 1 ☐ For offenses for which restitution is otherwise mandatory under 18 U.S.C. § 3663A, restitution is not ordered because the number of identifiable victims is so large as to make restitution impracticable under 18 U.S.C. § 3663A(c)(3)(A).
  - 2 ☐ For offenses for which restitution is otherwise mandatory under 18 U.S.C. § 3663A, restitution is not ordered because determining complex issues of fact and relating them to the cause or amount of the victims' losses would complicate or prolong the sentencing process to a degree that the need to provide restitution to any victim would be outweighed by the burden on the sentencing process under 18 U.S.C. § 3663A(c)(3)(B).
  - 3 ☐ For other offenses for which restitution is authorized under 18 U.S.C. § 3663 and/or required by the sentencing guidelines, restitution is not ordered because the complication and prolongation of the sentencing process resulting from the fashioning of a restitution order outweigh the need to provide restitution to any victims under 18 U.S.C. § 3663(a)(1)(B)(ii).
  - 4 ☐ Restitution is not ordered for other reasons. (Explain.)
- D ☐ Partial restitution is ordered for these reasons (18 U.S.C. § 3553(c)):

### VIII ADDITIONAL FACTS JUSTIFYING THE SENTENCE IN THIS CASE (If applicable.)

Sections I, II, III, IV, and VII of the Statement of Reasons form must be completed in all felony cases.

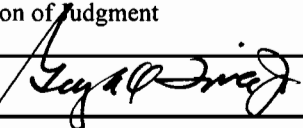
Defendant's Soc. Sec. No.: 000-00-5281

Defendant's Date of Birth: 00-00-1982

Defendant's Residence Address: Sudbury, MA 01776

Defendant's Mailing Address: Plymouth County House of Correction

Date of Imposition of Judgment 04/12/12

Signature of Judge 

The Honorable George A. O'Toole Judge, U.S. District Court

Name and Title of Judge George A. O'Toole

Date Signed 4/13/12

## 1 STATEMENT OF REASONS (FROM TRANSCRIPT)

2  
3 \* \* \*4  
5 THE COURT: The sentencing statute, Section 3553(a) of  
6 Title 18, sets forth a number of specific categorical factors  
7 to be considered by a court in devising an appropriate  
8 sentence. The weight given to any particular factor varies  
9 from case to case based on the particular facts and context of  
10 the case at hand. It is not uncommon that the factors  
11 sometimes might point in different directions, and it is an  
12 accommodation, or the balance of the several factors, that  
13 ultimately should support the judgment that is made. So let me  
14 address the factors in some detail.15 Two of the factors are the nature and circumstances of  
16 the offense and the need to provide for just punishment of that  
17 offense. The defendant was convicted after trial of providing  
18 and attempting and conspiring to provide material support to  
19 al Qa'ida, support that he intended to have the effect of  
20 advancing al Qa'ida's murderous operations in Iraq and  
21 elsewhere. He was convicted of conspiring with others to join  
22 in training camps in the hope of actually engaging in fighting  
23 himself. He was also convicted of conspiring with others both  
24 in person and through the internet to perform services,  
25 including translation and dissemination services, in support of

1 al Qa'ida. The proof came some through witnesses, but much of  
2 it consisted of the defendant's own words in chats and emails  
3 and recordings.

4 The trip to Yemen for the defendant in the end proved  
5 to be a more or less feckless attempt, though it was no less a  
6 serious attempt for its failure. It was an attempt, the result  
7 of a conspiracy, to join in an armed struggle against American  
8 forces and American nationals. It is long settled in our law  
9 that conspiracy and attempt are punishable by substantial  
10 penalties even in the event of their failure to succeed.

11 Later the defendant found a more suitable and  
12 congenial role: He could provide material support to al Qa'ida  
13 by proselytizing and translating, knowingly and intentionally,  
14 according to the evidence, aiding the media wing of al Qa'ida,  
15 As-Sahab, and others in promoting violent jihad and recruiting  
16 young Muslim men of the English-speaking West to active  
17 participation in that jihad. He was effective in those efforts  
18 both at a micro and at a macro level.

19 At the micro level he was a charismatic leader, as I  
20 think we have seen this morning, of a small group of  
21 Massachusetts men who, with him, were drawn into radical  
22 Salafist jihadi theology and ideology, such as Massoud,  
23 Abu Bakr, Maldonado, Spaulding, Abu Zahra, and even Abousamra.  
24 Among other things, including his strong and magnetic  
25 personality and his native intelligence, the defendant's

1 serious religious scholarship made him a kind of leader in that  
2 group, and they looked to him for leadership and guidance and  
3 he encouraged them to radical action.

4 At the macro level he was a respected voice in web  
5 forums, chat rooms, one-on-one messaging. He was an active  
6 participant in the radical at-Tibyan forum and was, from the  
7 evidence at trial, including posts from that forum -- he was  
8 accorded a degree of respect from the other participants.

9 It is true he eventually was "kicked off," I think as  
10 Mr. Carney put it at trial, the forum because his views were  
11 not as extreme as others, but extremity is a relative term and  
12 it would be hard to characterize the defendant's views as  
13 moderate simply because they weren't at the outer edge of  
14 extremity. The debate was -- or at least the one that was  
15 highlighted at trial -- was exactly who it was permitted to  
16 kill in the execution of jihad. And the defendant expressed  
17 concern about violence to those whom he regarded as truly  
18 innocent, but it was also plain that he had no qualms about the  
19 killing by explosive device or by beheading of persons whom he  
20 regarded as supporting U.S. military action in Muslim  
21 countries, including non-military personnel who were in  
22 support.

23 He translated important propaganda works including, of  
24 course, the "39 Ways" and the "Expedition of Umar Hadeed,"  
25 which celebrated and encouraged suicide bombers, and as a

1 consequence he was sought out on occasion by al Qa'ida in Iraq  
2 as a translator for other works, including one by as important  
3 a figure as Ayman al-Zawahiri. That he was sought out in this  
4 way even though in that instance he did not undertake the work,  
5 showed that at least some in al Qa'ida valued the support that  
6 he was able to give.

7 It was possible, even appropriate, a few months ago to  
8 wonder whether the defendant could be guilty of the crimes he  
9 was charged with, but the jury has answered that question, and  
10 that verdict necessarily implies the rejection of the  
11 defendant's argument made at trial that his activity was  
12 limited to protected speech or independent advocacy. To think  
13 otherwise, one would have to disregard a great deal of the  
14 actual trial evidence. So that's a summary of the criminal  
15 acts that support the verdicts in the case, and those acts  
16 warrant a substantial criminal sanction as a penalty.

17 Another factor in the statute is the need to promote  
18 respect for the law. This is a consideration that looks in two  
19 directions. On the one hand, the sentence must be one that  
20 satisfies the wider community that the law has been vindicated  
21 by the sentence imposed; that is, that the punishment fits the  
22 crime and is imposed in an appropriate and proportionate way to  
23 the seriousness of the offense. This satisfies the community's  
24 legitimate interest in a retributive punishment.

25 On the other hand, the sentence must also promote

1     respect for the law in the sense that it serves as a warning to  
2     those who might be tempted to commit similar offenses, that  
3     their criminal acts will be punished appropriately as well.  
4     And this serves as an instrument of deterrence of future  
5     criminal conduct. Both of these interests are also significant  
6     in this case.

7             Another factor in the statute is the history and  
8     characteristics of the defendant. This can often be a  
9     confounding factor. In many ways, many genuine ways, the  
10    defendant has behaved as an exemplary citizen, as the many  
11    letters submitted in his support attest. I credit the facts  
12    and opinions expressed in those letters, as far as they go.  
13    Even the evidence in the case showed the defendant to be an  
14    intensely serious young man interested sincerely in how he  
15    should form his life and conduct to please God and to exemplify  
16    Islamic life properly lived. That itself is noble and  
17    praiseworthy.

18            He became, however, consumed with a religious  
19    enthusiasm that was at once partly admirable and partly  
20    horrifying. And as to the events at issue in this case, the  
21    horrifying part came to dominance and it led him to willful  
22    participation in the conspiracies and attempts, of which he  
23    stands convicted.

24            Many of the letter-writers have noted how difficult it  
25    is for them to believe that the Tarek Mehanna that they knew

1 could simultaneously be the Tarek Mehanna described in the  
2 indictment and, it must be said, substantiated in the trial  
3 evidence.

4           The sad fact is that it is not an uncommon phenomenon.  
5 One might call it the Jekyll-and-Hyde phenomenon. It is a  
6 reality of human nature that we all have capacities for both  
7 good and evil, and we all do acts both good and evil in various  
8 proportions in the course of our lives. And the good and evil  
9 impulses and acts sometimes occur simultaneously with each  
10 other. In sentencing we see this phenomenon, as I say,  
11 commonly. You might be surprised how frequently people  
12 convicted of serious crimes are shown to have lived, in other  
13 respects, lives of probity and charity. Just as two wrongs  
14 don't make a right, two rights don't excuse a wrong, and the  
15 wrong still must be punished. Still, the punishment must be  
16 appropriate specifically to this defendant and it should take  
17 account of who he is, fully considered.

18           A related consideration mandated by the statute is the  
19 need to protect the public from future crimes by the defendant.  
20 One object of criminal punishment is simply to incapacitate a  
21 defendant from committing another offense by reason of  
22 incarceration. That is typically an immediate or near-term  
23 objective effective during the term of incarceration. Another  
24 object of punishment for the longer term is to deter the  
25 punished defendant from repeating his offense. This could

1 occur by effecting a change of heart or by inducing a practical  
2 and self-interested calculation. In either event, the sentence  
3 should be sufficient to promote, optimally bring about, a  
4 commitment in the defendant not to reoffend. Both  
5 considerations apply here.

6 I am, frankly, concerned by the defendant's apparent  
7 absence of remorse notwithstanding the jury verdict. His  
8 position in this respect has, as I think we have seen this  
9 morning, a quality of defiance. As a consequence, this factor  
10 has significant prominence in the overall assessment of an  
11 appropriate punishment.

12 Two other related and important statutory factors  
13 affecting sentencing are the advice of the Sentencing  
14 Guidelines and the need of a sentence to avoid creating  
15 unwarranted disparities with other similarly situated cases.  
16 The statute requires the Court to consider the advice that  
17 emerges from the Sentencing Guidelines as to appropriate  
18 sentencing ranges, and it requires the Court to consider the  
19 need to avoid unwarranted disparity for similarly situated  
20 defendants.

21 These two requirements work in harmony. A principal  
22 purpose of the Guidelines has always been to provide judges  
23 with a common rubric and framework for deciding on an  
24 appropriate sentence, and by that commonality to try to reduce  
25 disparity in judgments from one judge to another and one

1 defendant to another. And in general terms, adhering to  
2 Guidelines' recommendations tends to have that effect.  
3 Nevertheless, the Guidelines are advisory, not mandatory, and a  
4 sentencing judge is ultimately responsible for imposing a just  
5 sentence in the particular case at hand, and that ultimate goal  
6 is not to yield to an uncritical adherence to the Guidelines'  
7 recommendation.

8           Some Guidelines provisions, such as the drug offense  
9 guidelines, are frequently consulted. And as a result, there  
10 is a large body of decisions involving their application.  
11 Where there has been such wide experience with guideline  
12 provisions, there is an opportunity to assess how well those  
13 provisions serve all the relevant sentencing factors, including  
14 the reduction of disparity in sentencing. And as has recently  
15 occurred with the drug guidelines, that experience can lead to  
16 a revision of the Guidelines to improve the match between their  
17 intention and their effect. The Guidelines at issue in this  
18 case have not had a similar frequency of application and,  
19 consequently, our collective experience with them is much more  
20 limited.

21           At least from the perspective of this case to which my  
22 attention has been directed, I do not think the Guidelines  
23 applied in accordance with their terms do an adequately  
24 reliable job in balancing the relevant sentencing factor for  
25 several reasons: First, the terrorism adjustments that we

1 referred to when we set the Guidelines range operate in a way  
2 that is too general to be convincingly reliable in a given  
3 case. Both the 12-level adjustment to the offense level and  
4 the automatic assignment of a Criminal History Category VI  
5 which are applied in any case that can be fairly characterized  
6 as a terrorism case, regardless of the particular facts, not  
7 only make the recommendation unuseful as a guide in a  
8 particular case but is actually, in my view, contrary to and  
9 subversive of the mission of the Guidelines which is to address  
10 with some particularity the unique facts of the given case.  
11 And gross adjustments such as the ones I've referenced do not  
12 do that.

13           Moreover, the automatic assignment of a defendant to a  
14 Criminal History Category VI is not only too blunt an  
15 instrument to have genuine analytical value, it is  
16 fundamentally at odds with the design of the Guidelines. It  
17 can, as it does in this case, import a fiction into the  
18 calculus. It would impute to a defendant who has had no  
19 criminal history a fictional history of the highest level of  
20 seriousness. It's one thing to adjust the offense level upward  
21 to signify the seriousness of the offense. It is entirely  
22 another to say that a defendant has a history of criminal  
23 activity that he does not, in fact, have.

24           Contrast this situation with the career offender  
25 guideline which makes a somewhat similar adjustment. But in

1 that instance the Guidelines make an adjustment to a  
2 defendant's criminal history score precisely because he has a  
3 certain criminal history. The adjustment to criminal history  
4 called for by Section 3A1.4(b) is, I believe, simply a way of  
5 "cooking the books" to get to a score and a desired sentencing  
6 range, at least as it is applied in the context of this case.  
7 So I find the Guidelines literally taken, because of those  
8 problems and perhaps a few others, not to be reliable advice.

9 Another way of assessing the usefulness of Guidelines  
10 advice is to look at how they have been actually applied, a  
11 kind of judicial biofeedback. A survey of cases involving  
12 convictions under the same statutes that are involved in this  
13 case indicates that courts have frequently varied downward by  
14 significant degrees from the range recommended by these  
15 Guidelines.

16 I asked our probation officer to obtain some  
17 statistical data from the Sentencing Commission regarding  
18 recent sentences under Sections 2339A and 2339B and 956, the  
19 key statutes involved here. The data she obtained is for  
20 fiscal years 2009 through 2011. It is a small sample and may  
21 not be statistically reliable. I don't use it for that purpose  
22 but for illustrative purposes.

23 In that period, that three-year period, offenders  
24 convicted under 2339B received non-government-sponsored  
25 below-range sentences slightly more than half the time. For

1 convictions under 2339A that figure rose to just above  
2 two-thirds. In cases involving both statutes there are only  
3 seven cases, and six of the seven received  
4 non-government-sponsored below-range sentences. Five offenders  
5 were convicted in that period under both 2339A and 956, and  
6 four of the five received non-government-sponsored below-range  
7 sentences.

8 As I say, these figures are, admittedly, a  
9 non-rigorous analysis, but they do suggest that judges faced  
10 with sentencing decisions in individual cases have not found  
11 the Guidelines range helpful in establishing the appropriate  
12 sentence. And, of course, in this case, even the government's  
13 recommended sentence is below the calculated guideline range  
14 and is, I guess, implicitly, a government-sponsored below-range  
15 recommendation.

16 All that said, the guidelines at issue are not wholly  
17 without some advisory value. If the principal defects, as I've  
18 found them, are omitted from the calculation, leaving in place  
19 the respective base offense levels and more common adjustments,  
20 such as role in the offense or obstruction of justice, one can  
21 hypothesize a calculation that tends to correct for what I find  
22 to be the defects in the Guidelines as they are written and  
23 strictly applied.

24 Without going through the details, because this is a  
25 hypothesis and not a strict application, leaving out the

1 terrorist adjustment to the offense level and the postulation  
2 of a criminal history of Category VI, the offense level under  
3 Count 1 would be 30; under Counts 2 through 4, 35; and under  
4 Counts 5 through 7, 14. Under the grouping rules, which are  
5 uncontroversial, the highest level, 35 for Counts 2 through 4,  
6 would be used, and that is appropriate in this case because  
7 those represent the gravamen of the prosecution.

8           Using a true criminal history category of I with a  
9 Level 35 produces a suggested guideline range -- and this is  
10 hypothetical, I repeat -- of 168 to 210 months. That range is  
11 generally in line with what the Sentencing Commission  
12 statistics indicate. For the same period, 2009 to 2011, the  
13 average sentence imposed on convictions under 2339B was 179 and  
14 a half months and the median was 135. For convictions under  
15 2339A the average sentence was 164.7 months and the median was  
16 144. For convictions under both sections the average was  
17 171.5, and the median 112.5. The numbers are substantially  
18 higher when a conviction under 956 is involved, as it is here,  
19 although, again, the sample size is very small for these cases.  
20 For convictions under 956 alone -- and there are a total of 12  
21 in the relevant period -- the average sentence was 276.3  
22 months, and the median 222. For the five convictions under  
23 both 2339A and 956, which is also the case here, the average  
24 sentence was 242 and a half months and the median was 204.

25           Now, I've used a lot of numbers, and I don't mean this

1 to be a mathematical computation. My point is simply to try to  
2 consult those non-guidelines Guidelines that might help make a  
3 decision about an appropriate sentence, having in mind what is  
4 legitimate, in my view, about the guidelines and, two, the need  
5 to avoid unwanted disparities across cases. I should add, of  
6 course, that none of this comparison addresses the particular  
7 facts of any of the cases; this is simply outcomes only. But  
8 in sum, when the features of the relevant guidelines here that  
9 I find to be defective are removed from the calculation, the  
10 resulting range is substantially consistent with what judges  
11 seem to have been actually doing in cases involving charges  
12 under the same statutes.

13 Now, proposing that hypothetical or "ghost" guideline,  
14 as I say, yields a suggested range, if we can even call it  
15 that, of 168 to 210. In coming to that conclusion, I have made  
16 two major judgments, disregarding parts of the guidelines as  
17 written, that have been favorable to the defendant.

18 Taking consideration of all the factors in 3553(a),  
19 including, in particular, the need for just punishment for the  
20 offense, the need to protect the public from future offenses by  
21 the defendant, and the need to avoid unwanted disparity, I  
22 think it is appropriate to impose a sentence at the upper end  
23 of that range, hypothetical range, of 210 months.

24 \* \* \*

25